

DEC 21 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELENA GUZMAN DE CASTANEDA,

Plaintiff - Appellant,

v.

STEPHEN L. FICKETT, District Director,
Phoenix Arizona, Bureau of Citizenship
and Immigration Services;
DEPARTMENT OF HOMELAND
SECURITY; ROBERT P. WIEMANN,
Director, Administrative Appeals Office,
Bureau of Citizenship and Immigration
Services, Department of Homeland
Security,

Defendants - Appellees.

No. 06-15407

D.C. No. CV-04-01143-ROS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Submitted December 3, 2007**
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: B. FLETCHER, BERZON, and RAWLINSON, Circuit Judges.

Appellant Elena Guzman de Castaneda (Guzman) appeals the district court's dismissal of her case as moot. Guzman's appeal has merit.

Guzman's contention that 8 U.S.C. § 1182(a)(9)(A)(ii) did not render her inadmissible and that she therefore should not have been required to file an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) prior to applying for adjustment of status constitutes a "present controversy as to which effective relief can be granted." *Nw. Envtl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244 (9th Cir. 1988). The gist of Guzman's action was consistent: she sought to overturn the denial of her Application for Permission to Reapply, which prevents her from applying for adjustment of status. Whether that is accomplished by a ruling that § 1182(a)(9)(A) does not apply or a reversal on the merits regarding the application of § 1182(a)(9)(A)(ii) to her case, "effective relief could be granted." *Id.* If the district court was dissatisfied with the state of Guzman's pleadings, leave to amend should have been allowed under Rule 15(a) of the Federal Rules of Civil Procedure. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (noting that this Court has "repeatedly stressed that the court must remain guided

by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities”) (citation, alteration and internal quotation marks omitted).

We decline to address the government’s argument regarding sufficiency of service of process and direct the district court to resolve this issue on remand. *See S.J. v. Issaquah School Dist. No. 411*, 470 F.3d 1288, 1293 (9th Cir. 2006).

REVERSED and REMANDED.